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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

 Plaintiff,

v.

MICROSOFT CORP.,
 and
 ACTIVISION BLIZZARD, INC.

 Defendants.

CASE NO. 3:23-cv-02880-JSC

**DEFENDANT ACTIVISION BLIZZARD,
 INC.'S STATEMENT IN RESPONSE TO
 PLAINTIFF FEDERAL TRADE
 COMMISSION'S ADMINISTRATIVE
 MOTION TO CONSIDER WHETHER
 ANOTHER PARTY'S MATERIAL
 SHOULD BE SEALED (Civil L.R. 79-5(f))
 [ECF NO. 226]**

Judge: Honorable Jacqueline S. Corley

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5(f)(3), Activision Blizzard, Inc. (“Activision”) respectfully requests that the Court maintain under seal its confidential information identified below, which was provisionally filed under seal pursuant to Plaintiff Federal Trade Commission’s (hereinafter “FTC” or “Plaintiff”) Administrative Motion to Consider Whether Another Party’s Materials Should Be Sealed (the “Administrative Motion”) (ECF No. 226). For the reasons described below and in the Declaration of Page Robinson (the “Robinson Decl.”) attached hereto, Activision respectfully requests that the Court consider this submission, which narrows the information that would be maintained under seal within the Direct Testimony of Robin S. Lee by the FTC (ECF No. 224) (“Lee Direct”).

The proposed sealing in the chart below reflects Activision’s good-faith efforts to narrowly seek sealing of only that information which is competitively sensitive and contained in internal documents, the public disclosure of which would cause injury to Activision that cannot be avoided through any less restrictive alternative means.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
Direct Testimony of Robin S. Lee by the FTC	Page 6, fn. 3, footnote lines 1-3 ¹	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.

¹ Activision can identify the specific portions referenced in this chart in a highlighted copy of the Lee Direct if the Court finds it helpful to issue its sealing order.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
Direct Testimony of Robin S. Lee by the FTC	Page 7, ¶ 20, paragraph line 4 and line 5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 7, ¶ 21, paragraph line 4 and line 5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, revenue figures and projections, and internal user metrics, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 10, ¶ 28, second bullet, portions of lines 1-3	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
Direct Testimony of Robin S. Lee by the FTC	Page 10, ¶ 28, third bullet, portions of paragraph lines 2-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 11, ¶ 28, fourth bullet, portions of lines 2-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 11, ¶ 29, portions of lines 1-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships,

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			and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 11, ¶ 29, portions of lines 5-10	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 11, fn. 21, portions of lines 5-6	Activision	This portion contains non-public and highly sensitive information including, but not limited to, terms of existing confidential agreements, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Page 11, fn. 23, portions of lines 2-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 12, ¶ 30, lines 4-5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 12, ¶ 31, portions of lines 7-8	Activision	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, and business

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			partnerships, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 12, ¶ 31, portions of paragraph line 10	Activision	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 13, Figure 1	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Page 14, ¶ 34, portions of lines 2-5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 14, fn. 25, portions of lines 3-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Page 17, Figure 2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 17, ¶ 44, portion of paragraph line 1	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 31, fn. 73, portions of lines 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Page 32, fn. 74, portions of lines 1-6	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 34, fn. 77, portions of lines 1, 3	Activision	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, and internal business metrics, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Page 38, ¶ 104, portions of lines 6, 8-9, 11, 14	Activision	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 39, ¶ 106, portions of lines 2-3, 6, 8, 10-11	Activision	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 40, ¶ 109, portions of lines 2-3, 5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, and revenue figures and projections, which could be used to

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			injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 40 ¶ 110, portions of lines 6-7 Page 41, ¶ 110, portion of line 2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 43, Figure 5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 43, ¶ 117, portions of lines 4, 6-7	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, and revenue figures and projections, which could be used to

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			injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 44, fn. 87, second paragraph, portions of lines 2-3	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 46, ¶ 126, portions of lines 8-9 Page 47, ¶ 126, portions of lines 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.

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Direct Testimony of Robin S. Lee by the FTC	Pages 46, fn. 93, portion of lines 9	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 47, ¶ 127, first bullet	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, revenue figures and projections, and internal business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 47, ¶ 127, second bullet	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, revenue figures and projections, and internal business strategy, which could be

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			used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 47, ¶ 127, third bullet ²	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, revenue figures and projections, and internal business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 47, fn. 96, portions of lines 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, revenue figures and projections, and internal presentations discussing business strategy which could be used to injure

² Activision only seeks to seal the amounts listed in this portion of Lee's testimony, and not the full text as originally proposed.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
			Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 49, ¶ 130, portions of lines 1-2, 4 ³	Activision	This portion contains non-public and highly sensitive information including, but not limited to, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 49, fn. 104, portion of fn. line 1	Activision	This portion contains non-public and highly sensitive information including, but not limited to, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.

³ Activision only seeks to seal the time listed in this portion of Lee's testimony, and not the full text as originally proposed.

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Direct Testimony of Robin S. Lee by the FTC	Page 51, ¶ 140, portion of paragraph line 2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, and internal business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 51, fn. 110, portions of lines 1-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, and internal business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 65, fn. 138, portions of lines 2-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, business partnerships,

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			and internal business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 70, fn. 155, portion of lines 1-9	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 70, ¶ 198, first bullet, portions of lines 3-5	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape,

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			business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 70, ¶ 198, second bullet, portion of line 2 Pages 71, ¶ 198, second bullet, portion of line 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Pages 71, ¶ 198, first full bullet, portions of lines 1-7	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities,

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			assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 71, fn. 158, portion of lines 1-6	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 71, fn. 161, portion of lines 1-4	Activision	This portion contains non-public and highly sensitive information including, but not limited to, business partnerships, and terms of existing confidential

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			agreements, which could be used to injure Activision if made publicly available.

ARGUMENT

I. Sealing Activision’s Confidential Business Information Contained in the Lee Direct Is Warranted Under Ninth Circuit Precedent

In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more than tangentially related to the underlying cause of action,’ bear the burden of overcoming the presumption with ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCOM GmbH & Co., KG*, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance the competing interests’ of the public and the party who seeks to keep certain judicial records secret.”). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP (VBK), 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records containing ‘information about proprietary business operations, a company’s business mode or agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

“The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.’” *Velasco*, 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App’x at 569); *see also*

1 *Elec. Arts*, 298 F. App'x at 569 (“A ‘trade secret may consist of any formula, pattern, device or
 2 compilation of information which is used in one’s business, and which gives him an opportunity to
 3 obtain an advantage over competitors who do not know or use it.’”) (citation omitted). A court has
 4 “broad latitude” to grant protective orders to prevent disclosure of “many types of information,
 5 including, but not limited to, trade secrets or other confidential research, development, or
 6 commercial information.” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 7 1211 (9th Cir. 2002).

8 In determining whether a document should be filed under seal, courts consider, among
 9 other things, the measures taken to guard the information’s secrecy and the value of the
 10 information to the business or its competitors. *E.g.*, *Phillips ex rel. Estates of Byrd v. Gen. Motors*
 11 *Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002). Here, Activision seeks to seal three narrowly tailored
 12 excerpts of the Lee Direct which reference and reflect, among other things, confidential,
 13 proprietary information relating to Activision’s internal decision-making processes, strategic
 14 evaluation of forward-looking opportunities, business partnerships, and internal business strategy.
 15 The disclosure of this information could be used to injure Activision if made publicly available.

16 **II. Sealing the Lee Direct Is Necessary to Protect Activision’s Confidential and**
 17 **Proprietary Business Information**

18 Activision seeks to maintain under seal three portions of the Lee Direct, as they contain
 19 Activision’s non-public and highly sensitive information from documents obtained during the
 20 course of the FTC’s investigation and during litigation discovery. Robinson Decl. ¶¶ 4–6.
 21 Examples of such confidential information include, but are not limited to, information reflecting
 22 Activision’s internal decision-making processes, strategic evaluation of forward-looking
 23 opportunities, business partnerships and negotiations, terms of existing confidential agreements,
 24 and internal business strategy. *Id.* ¶¶ 4. Activision takes robust measures to maintain the
 25 confidentiality of all the above-described information and does not disclose it publicly. *Id.* ¶ 6.
 26 Disclosure of this information would provide Activision’s competitors with private information
 27 about Activision’s performance and internal business strategy, which could harm Activision’s
 28 competitive standing. *Id.* ¶ 5; see *Cont’l Auto. Sys. v. Avanci, LLC*, No. 19-cv-02520-LHK, 2019

1 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly confidential and
 2 sensitive information would cause injury to Activision that cannot be avoided through less
 3 restrictive alternatives. *See* Robinson Decl. ¶ 5.

4 Finally, Activision provided the FTC with the confidential business information cited in the
 5 Lee Direct pursuant to the statutory and regulatory guarantees of confidentiality contained in the
 6 Hart-Scott-Rodino Act or the FTC Act. *Id.* ¶ 6; *see also* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-
 7 2(c); 6 C.F.R. § 4.10(d)-(g). In similar cases, the FTC has acknowledged the need to maintain the
 8 confidentiality of a party's confidential business information that has been provided to the FTC via
 9 a regulatory request. *See, e.g., FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at *2 (D.D.C.
 10 Jan. 25, 2022) ("According to the FTC, sealing the complaint is appropriate . . . because the filing
 11 includes confidential information submitted . . . pursuant to 'statutory and regulatory guarantees of
 12 confidentiality.' . . . The requested sealing covers only confidential information and is, according to
 13 the FTC, required by regulation.").

14 **III. Conclusion**

15 As stated above, compelling reasons justify sealing Activision's confidential business
 16 information contained within the Lee Direct, and Activision respectfully requests that this Court
 17 grant the FTC's Administrative Motion to Consider Whether Another Party's Material Should Be
 18 Sealed (ECF No. 226), consistent with the specific recitations stated herein. In accordance with
 19 Civil Local Rule 7-11, Activision has also filed a Proposed Order herewith.

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 21 DATED: July 3, 2023

By: /s/ Caroline Van Ness

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